

FCC MAIL SECTION

Federal Communications Commission

FCC 98-61

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DISPATCH

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In re	)	
	)	
LEWIS B. ARNOLD	)	CIB Docket No. 98-45
Chewelah, Washington	)	
	)	
Order to Show Cause Why a	)	
Cease and Desist Order Should Not Be Issued	)	

**ORDER TO SHOW CAUSE AND  
NOTICE OF OPPORTUNITY FOR HEARING**

**Adopted:** April 2, 1998

**Released:** April 6, 1998

By the Commission:

1. The Commission has under consideration information concerning the transmission of radio signals without a license by Lewis B. Arnold ("Arnold"). For the reasons that follow, we order Arnold to show cause, pursuant to Section 312(c) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 312(c), why we should not issue a cease and desist order which prohibits further unauthorized transmissions on his part. Also, pursuant to Section 1.80(g) of the Commission's Rules (the "rules"), 47 C.F.R. § 1.80(g), this order constitutes a notice of opportunity for hearing to determine whether, in addition to or as an alternative to the issuance of a cease and desist order, a forfeiture should be imposed for violations of the Act and the rules.

2. **Background.** On June 26, 1997, Dennis Anderson, the Seattle, Washington, District Director of the Commission's Compliance and Information Bureau ("CIB"), received information from Eric Carpenter ("Carpenter"), General Manager of AM/FM broadcast stations KCVL/KCRK in Colville, Washington, concerning an unauthorized radio station operating on 95.3 MHz in Chewelah, Washington. Carpenter alleged that the unauthorized station caused economic harm and interference to the reception of his station on 92.1 MHz. On July 7, 1997, the CIB Seattle Field Office received additional information from Carpenter to the effect that the Chewelah station was owned by Arnold. On July 9, 1997, a warning letter was sent to Arnold regarding the unlicensed radio station on 95.3 MHz. In pertinent part, the warning letter stated:

Under Section 301 of the Communications Act of 1934, as amended, and the Commission's Rules and Regulations, radio transmitting apparatus, (other than certain low powered devices operated in accordance with Part 15 of the Commission's Rules and Regulations), may be operated only upon issuance by this Commission of a station license covering such apparatus. Unlicensed operation may subject the operator to serious penalties provided for in the Communications Act. Because unlicensed operation creates a definite danger of interference to important radio communications services and may subject the operator to the penalties provided for in the Communications Act, the importance of complying strictly with the legal requirements mentioned above is emphasized.

The letter also requested that Arnold submit a written explanation concerning the circumstances leading to the unauthorized operation of transmitting equipment and what corrective action had been or would be taken to prevent any future recurrence. Commission records reveal no response from Arnold to this letter.

3. Thereafter, on August 20, 1997, Agents Donald Roberson ("Roberson") and Michael Rothe ("Rothe") proceeded to the Chewelah area and detected a radio signal on 95.3 using radio direction-finding techniques. Further monitoring led Roberson and Rothe to conclude that the signal originated from a vertical dipole antenna mounted on a pole attached to a building located at N 103 4th Street East, Chewelah. Field strength measurements indicated signal levels, when extrapolated to 3 meters, of 1,261,500  $\mu\text{V/m}$  and 60,700  $\mu\text{V/m}$ . Part 15 of the rules allows unlicensed operation of a low power radio transmitter in the FM broadcast band provided the signal level is below 250  $\mu\text{V/m}$  at a distance of 3 meters. 47 C.F.R. § 15.239. Thus, the field strength measurements taken exceeded those allowed by Part 15 of the rules.

4. Again, on August 22, 1997, Roberson and Rothe located through radio direction-finding techniques an unlicensed radio station operating on 95.3 MHz at N 103 4th Street East, Chewelah. At approximately 12:05 p.m., Roberson and Rothe, accompanied by Chewelah Police Officer Mark Burrows, entered the property at N 103 4th Street East and requested to inspect the station. Arnold invited the agents into his station and gave them permission to inspect the radio transmission equipment.

5. Roberson and Rothe observed various pieces of audio gear and an FM stereo transmitter, an amplifier rated at one Watt output, and a vertical dipole antenna.<sup>1</sup> Arnold then acknowledged the following: 1) there is no license for the facilities; 2) he was fully responsible for the unlicensed station; 3) he was operating unlicensed to see if there was community support for his operation; 4) he had put the radio equipment together from a kit; 5) he has a web page for the radio station on the Internet; and 6) he had received the FCC warning letter.<sup>2</sup> By warning letter hand-delivered by Roberson and Rothe, Arnold again was advised that operation of the radio station violated federal law, and he was ordered to cease operations. Arnold shut the station off at 1:02 pm, as the agents were leaving. Subsequently, by letter dated August 25, 1997, Carpenter alleged that Arnold had resumed broadcasting on 95.3 MHz. On September 9, 1997, Carpenter telephoned District Director Anderson in the CIB Seattle Field Office, reiterating his complaint that Arnold's unlicensed transmissions were continuing. On March 21, 1998, at 10:00 am, Roberson confirmed that Arnold's transmissions were in fact continuing and that the signal levels far exceeded Part 15 limits.

6. **Discussion.** Section 301 of the Act, 47 U.S.C. § 301, provides in pertinent part:

It is the purpose of this Act, among other things, to maintain the control of the United States over all the channels of radio transmission . . . . No person shall use or operate any apparatus for the transmission of energy or communications or signals by radio (a)

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<sup>1</sup> Arnold requested that his signal be checked without the amplifier on. A field strength measurement revealed that with the amplifier off he was still exceeding Part 15 limits.

<sup>2</sup> Arnold also admitted that he holds an Amateur Extra Class operator license, call sign KJ7VR. On February 28, 2005, such license is due to expire. Should Arnold be found in violation of the Commission's Rules and the Communications Act based on the evidence before the Commission, any questions raised about Arnold's qualifications to remain a Commission licensee will be addressed in a separate proceeding.

from one place in any State . . . to another place in the same State . . . except under and in accordance with this Act and with a license in that behalf granted under the provisions of this Act.

Anyone transmitting radio transmissions in the United States must have authority from the Commission to do so. See 47 U.S.C. § 301; U.S. v. Medina, 718 F. Supp. 928 (S.D. Fla. 1989); U.S. v. Weiner, 701 F.Supp. 15 (D.Mass. 1988), aff'd, 887 F.2d 259 (1st Cir. 1989); Stephen Paul Dunifer, 11 FCC Rcd 718, 720-21, ¶ 7-9 (1995)(regarding Commission's licensing requirement); and Order to Show Cause and Notice of Apparent Liability, 50 Fed. Reg. 20603, published May 17, 1985 (Alan H. Weiner). As the facts recited above reflect, it appears that Arnold has violated and may currently be violating Section 301 of the Act.

### ORDERING CLAUSES

7. **ACCORDINGLY, IT IS ORDERED** that, pursuant to Section 312(c) of the Act, Lewis B. Arnold **IS DIRECTED TO SHOW CAUSE** why he should not be ordered to **CEASE AND DESIST** from violating Section 301 of the Act, at a hearing to be held at a time and location specified in a subsequent Order, upon the following issues:

1. To determine whether Lewis B. Arnold has transmitted radio energy without appropriate authorization in violation of Section 301 of the Act.
2. To determine whether, based on the evidence adduced pursuant to the preceding issue, Lewis B. Arnold should be ordered to cease and desist from violating Section 301 of the Act.

8. **IT IS FURTHER ORDERED** that, pursuant to Section 312(d) of the Communications Act of 1934, as amended, both the burden of proceeding with the introduction of evidence and the burden of proof shall be upon the Compliance and Information Bureau with respect to issues 1 and 2.

9. **IT IS FURTHER ORDERED** that this Order to Show Cause shall constitute a Bill of Particulars with respect to all foregoing issues.

10. **IT IS FURTHER ORDERED** that, to avail himself of the opportunity to be heard, Lewis B. Arnold, pursuant to Sections 1.91(c) of the Commission's Rules, in person or by attorney, **SHALL FILE** in triplicate with the Commission within twenty (20) days of the mailing of this Order, a written appearance stating that he will appear at the hearing and present evidence on the matters specified in this Order.

11. **IT IS FURTHER ORDERED** that, without regard as to whether the hearing record warrants an order that Lewis B. Arnold cease and desist from violating the Act or the rules, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an

**ORDER FOR FORFEITURE** in an amount not to exceed \$11,000<sup>3</sup> shall be issued against Lewis B. Arnold for the alleged violations of Section 301 of the Act.

12. **IT IS FURTHER ORDERED** that in connection with the possible forfeiture liability noted above, this document constitutes a notice of opportunity for hearing pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules.

13. **IT IS FURTHER ORDERED** that a copy of each document filed in this proceeding subsequent to the date of adoption of this Order **SHALL BE SERVED** on the counsel of record appearing on behalf of the Chief, Compliance and Information Bureau. Parties may inquire as to the identity of such counsel by calling the Compliance and Information Bureau at (202) 418-1100, TTY (202) 418-2544. Such service **SHALL BE ADDRESSED** to the named counsel of record, Compliance and Information Bureau, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

14. **IT IS FURTHER ORDERED** that the Office of Public Affairs, Reference Operations Division of the Commission send a copy of this Order by Certified Mail - Return Receipt Requested to:

Lewis B. Arnold  
N 103 4th Street East  
2741 Flowery Trail Road  
Chewelah, Washington 99109

Also forward to:

Lewis B. Arnold  
The Independent  
P.O. Box 5  
Chewelah, Washington 99109

**FEDERAL COMMUNICATIONS COMMISSION**



Magalie Roman Salas  
Secretary

<sup>3</sup> This figure reflects the maximum appropriate forfeiture amount in light of the specific facts at issue. See 47 U.S.C. § 503(b)(2)(C); 47 C.F.R. §§ 1.80(b)(3), (b)(4), (b)(5); see also In re the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, 12 FCC Rcd 17087 (1997)(petitions for reconsideration pending).